Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

ESTATE OF DOLORES B. SCHEIDLY

V

TRAVELERS INSURANCE COMPANY

Respondent

JOSEPH M. SCHEIDLY

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Joseph M. Scheidly, Pro se
606 Dutton Street
Aston , Pa. 19014
(610) 485-4274

27pb

QUESTIONS PRESENTED FOR REVIEW

Why did the United States Court of Appeals for the Third Circuit Affirm District Courts decision using a complaint submitted by the defendants in relitigation of insurance benefits that was not properly served ?

Why did the United States Court of Appeals for the Third Circuit affirm Districts Courts decision for failure to hear Plaintiffs "Motion for Summary Judgment" properly served representing a collateral attack on lower courts judgments ?

Why did the United States Court of Appeals for the Third Circuit ignore Fed R. Civ. 12 (a) when the defendant refused To answer the plaintiffs "Motion for Summary Judgment that was properly served ?

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Constitutional law under the 5th and 14th Amendments to the Constitution of the United States against unfair procedural Due process by Arbitrary and Capricious actions for refusing to hear a "Motion for Summary Judgment " properly served under Federal Rule of Civil Procedure 4 ---------- 4

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Plaintiff Joseph M. Scheidly authorized substitute for his wife Dolores B. Scheidly by United States Court of Appeals for the 3rd Circuit order of June 1, 1999 , requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit. (App. A).

OPINIONS BELOW

Opinion of the United States Court of Appeals Third Circuit No. 99-1317 (App. B) Order and memorandum of the United States District Court E.D Pennsylvania No. 99-265 (App. C) As this appeal deals with the judgment the back ground of the case by the District Court has been deleted .

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on September 23, 1999 . the Court of Appeals denied a timely petition for rehearing September 23, 1999 (App. D).

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 12

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure 3,4,and 12 (a) were distorted by the decisions of the United States Court of Appeals for the Third Circuit .

FEDERAL RULES OF CIVIL PROCEDURE 3,4,AND 12(A)

Federal Rule of Civil 3 was distorted when a complaint that was not properly served was used in a decision against Scheidly by the District Court in the case of Dolores B. Scheidly v. Travelers Insurance Company that this appeal represents.

Federal Rule of Civil Procedure 4 was distorted when the plaintiff Scheidlys " Motion for Summary Judgment" properly served under the Federal Rule of Civil procedure 4 was ignored .

Federal Rule of Civil Procedure 12 (a) was distorted when Traveler Insurance Company ignored to answer the summons served upon them for a Complaint in "Motion for Summary Judgment" .

STATEMENT OF CASE

The fundamental question in this appeal is ? did the court have the right to ignore Shceidlys "Motion For Summary Judgment" Properly served and substitute a complaint that was not properly served .

January 15, 1999 Dolores B. Scheidly (Scheidly) Pursuant to Fed. R. Civ. P. 3 filed a complaint /plea for cause of action in a "Motion for Summary Judgment".

January 19,1999 the District Court Entered Scheidlys complaint .

January 21, 1999 Scheidly mailed Travelers Insurance Company (Travelers) a courtesy copy of the January 15,1999 complaint /plea for cause of action ,**unaccompanied** with a summons or certificate of service . (App. E)

While Scheidly was preparing her service of process she received a court order dated January 21, 1999 from the District Court advising that her "Motion for Summary Judgment" was being dismissed without prejudice. In a Phone call to the Clerks office the deputy Clerk Zachery Robinson advised Scheidly that as soon as Travelers was properly served , the order of January 21, 1999 would be dismissed .

On January 23, 1999 Scheidly served Travelers with a "Motion for Summary Judgment" accompanied with summons and certificate of service and copied to Linda Lewandowski in the Clerks Office of the United States District Court E.D. Pennsylvania . (Appendix F- H)

On February 11, 1999 Travelers responded with a "Motion to Dismiss Complaint" alleging that the January 15, 1999 complaint used in their "Motion to Dismiss Complaint" was properly filed under Fed. R .Civ. 3.
(App. H)

On 16, 1999 Scheidly replied to Travelers response of February11, 1999 with a "Memorandum of law" identifying that the complaint used in Travelers "Motion to Dismiss Complaint" was without more and not sufficient to satisfy service of complaint under Fed R. Civ. P. 4 (d) (1) as suggested in the case of ***Defazio v. Delta Air Lines 849 , F.Supp 98*** ,quoting the First Circuit in the case ***Precision Etchings and Findings Inc. v. LGP Ltd 953,F.2d. , 24*** .Also in this same memorandum Scheidly requested Default Judgment because Travelers ignored Scheidlys "Motion of Summary Judgment" properly served upon them pursuant to Fed. R. Civ. 4 , as a result this "Memorandum of law received no response.

ARGUMENT AND REASON TO GRANT A WRIT OF CERTIORARI

Scheidly raises no argument that Travelers has accused her of filing a complaint under Fed.R.Civ.P. 3, because she did to invoke action in the United States District Court E.D. Pennsylvania. What Scheidly argues is that this same complaint used in Travelers "Motion to Dismiss Complaint" is not supported with a summons or certificate of service , Fed R. Civ. P. 4 makes it clear that the time to answer is keyed to the time of service and not the filling of the complaint –***31 F.R.D. 181 Bell v. Hosse , D.C. Tenn. 1962 ,*** advises that the court has no power over the defendant until proper service has been made.

Scheidly also argues she properly served Travelers a "Motion for Summary Judgment" under Fed. R. Civ. P. 4 that was deliberately ignored by Travelers representing a uncontested motion and a judgment in Scheidlys favor for Travelers Failure to plea .

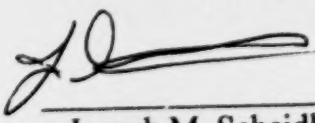
Scheidly again argues that when Travelers deliberately ignored Scheidlys "Motion for Summary Judgment" ,Properly served , suggests a Culpable act by Travelers and their attorneys outlined in the decision of the case ***Direct Mail Specialists v. Eclat Computerized Technologies 840, F.2d, 685.***

CONCLUSION

Under the circumstances of this appeal ; especially that part deliberately denying to be heard the Plaintiff Scheidlys "Motion for Summary Judgment" properly served , is an Arbitrary and Capricious act in violation to Scheidly rights under the 5th and 14th Amendments to the United States

Constitution for a fair procedural Due Process, Accordingly The decision of the United States Court of Appeals for the Third Circuit should be vacated and the matter rescheduled for another hearing ,representing the complained of by the plaintiff Scheidly in her "Motion for Summary Judgment". For the Abuse of Process Malicious use of process denial of the Constitutional right to Due Process and the Equal Protection of Pennsylvania law.

Respectfully Submitted
In memory of my wife



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APPENDIX

APPENDIX A-- MOTION TO SUBSTITUE THE DECEASED APPELLANT WTITH HER HUSBAND JOSEPH M. SCHEIDLY MOTION GRANTED JUNE 1 , 1999

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May17,1999
A65

No. 99-1317

Dolores B. Scheidly
Appellant

v.

Travelers Ins. Co.

Present : LEWIS AND RENDELL , CIRCUIT JUDGES

Motion by Appellants Husband to be substituted party because Appellant is deceased as 5/11/99

Phyliss Ruffin 595-1895

Order

The foregoing motion is granted

By the Court,
S/ illegible

Dated June 1, 1999

Circuit Judge

APPENDIX "B"—JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AND FILED AUGUST 20, 1999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1317

DOLORES B. SCHEIDLY

v.

TRAVELERS INSURANCE COMPANY

Joseph M, Scheidly

Appellant

On the appeal from the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ No. 99-00265)
Before District Judge : Honorable Ronald L. Buckwalter

Submitted Under the Third Circuit LAR 27.4 and I.O. P. 10.6

July 29, 1999

Appendix B

Before: MANSEN , GREENBERG and MCKEE Circuit Judges.

JUDGMENT

This case came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania pursuant and was submitted to Third Circuit LAR 27.4 and I.O.P. 10.6 on consideration whereof , it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered March 16, 1999 be the same is hereby affirmed .Costs taxed against the appellant .All the above in accordance with the opinion of this Court .

ATTEST

S / Illegible

Clerk

DATED AUG. 20,1999

APPENDIX "C" ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA DATED AND FILED MARCH 15,1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOLORES B. SCHEIDLY	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	No. 99-265
	:	
TTRAVELERS INSURANCE COMPANY	:	
	:	
Defendant	:	

ORDER

AND NOW THIS 15 day of March ,1999 upon consideration of defendants motion to dismiss as converted to one for summary judgment (Docket No. 5) and plaintiffs response thereto (Docket Nos 1,2 and 6) it is hereby **ORDERED** that the Motion is **GRANTED** . Judgment is entered in favor of Defendant , Travelers Insurance Company and against Plaintiff , Dolores Scheidly . The Clerk of the Court shall Mark this Case Closed .

MEMORANDUM

Buckwalter, J. March 15 1999

Appendix C

Plaintiff Dolores Scheidly filed a pro se complaint on January 19, 1999 , merely listing claims for malicious use process , malicious abuse of process and violation of due process and equal protection .Plaintiff simultaneously moved for summary judgment ,identifying for the first time, factual allegations for the claims that were sequentially listed in her complaint .On January 21, 1999 this Court Dismissed ,without prejudice "Plaintiffs Motion For Summary Judgment" for failure to comply with Fed R.Civ. 56(a) . Defendant subsequently filed the present Motion to dismiss Plaintiffs complaint pursuant to Rule 12 (b)(6) .For purposes of deciding the motion , the Court will treat the materials submitted by the plaintiff in support her Summary Judgment Motion as part of her complaint .

By the Court

S/ Illegible

Ronald L. Buckwalter

APPENDIX "D"---ORDER OF THE UNITED STATES COURT OF APPEALS FOR THIRD CIRCUIT DENYING PETITION FOR REHEARING DATED SEPTEMBER 23,1999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1317

DOLORES B. SCHEIDLY

V.

TRAVELERS INSURANCE COMPANY

Joseph M. Scheidly

Appellant

On appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-00265)

SUR PETITION FOR REHEARING

BEFORE: BECKER Chief Judge , and SLOVITER, MANSMANN, GREENBERG , SCRICA , NYGARRD , ALITO , ROTH , MCKEE , and RENDELL , Circuit Judges

BEST AVAILABLE COPY

judges who participated in the decision of this court and to all other available circuit of the court in regular active service and no judge concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied .

BY THE COURT:

S/ Illegible

Circuit Judge

DATED SEPT. 23, 1999

APPENDIX E---COURTESY LETTER OF JANUARY 21, 1999 WITH ATTACHED COMPLAINT OF JANUARY 15,1999 WITHOUT SERVICE TO INVOKE ACTION IN THE DISTRICT COURT

Dolores B. Scheidly v. Travelers Insurance Company

Dear Sir, Madam;

Please excuse the delay , by billing error ,a copy of the attached complaint and track designation record form received in the United States District Court , 1/19/19

Sincerely,
S/deceased
Dolores B. Scheidly

CC: Clerks Office
United States District Court
E.D. Pennsylvania

ATTACHED COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTER DISTRICT OF PENNSYLVANIA

Dolores B. Scheidly Pro se 606 Dutton Street Aston , Pa. 19014	:	**No Civil Action No.**
vs.	:	
Travelers Insurance Company 1Tower Square Hartford , Conn.	:	Defendant

Appendix E

COMPLAINT

Plaintiff Dolores B. Scheidly files the following complaint in a Motion for Summary Judgment rule 56(a), against Travelers Insurance Company .

FOR THE MALICIOUS USE OF PROCESS , ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW .

1/15/99
deceased
Dolores B. Scheidly Pro se
S/ on file available on request

APPENDEX F---CERTIFICATION OF SERVICE BY DOLORES B. SCHEIDLY FOR A "MOTION FOR SUMMARY JUDGEMENT" AS A COLLATERAL ATTACK ON LOWER COURTS DECISIONS

IN THE UNITED STATES DISTRICT COURT
E. D. PENNSYLVANIA

CIVIL ACTION NO. 99-265

DOLORES B. SCHEIDLY
Plaintiff Pro se

v.

TRAVELERS INSURANCE COMPANY
Defendant

CERTIFICATE OF SERVICE

I Dolores B. Scheidly plaintiff Pro se , certify that I have served a correct copy of plaintiffs brief for motion of summary judgment and a copy of summons , in a civil action in the United States District Court E . D. Pennsylvania by certified mail Z 088 041 441 to Travelers Insurance Company and as courtesy by first class mail to the Honorable Judge Cronin and the Honorable Judge Battle in the court of Common Pleas Delaware County Pa.

Consumer Affairs
Travelers Insurance Company
1 Tower Square

Appendix F

Hartford, Conn. 06183

The Honorable Judge Battle
Court of Common Pleas
Delaware County Court house
Media, Pa. 19063

The Honorable Judge Cronin
Court of Common Pleas
Delaware County Courthouse
Media , Pa. 19063

DATED 1-23-99

deceased

Dolores B. Scheidly Pro se

S/ on original copy
Available on request

APPENDIX G--- COVER PAGE AND PAGE ONE OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT OUTLINING A COLLATERAL ATTACK ON LOWER COURTS DECISIONS AND THE DEFENDANTS LIABILIABILITY

COVER PAGE

IN THE UNITED STATES DISTRICT COURT
E.D. PENNSYLVANIA

NO.

DOLORES B. SCHEIDLY
Plaintiff

vs.

TRAVELERS INSURANCE COMPANY
Defendant

MOTION FOR SUMMARY JUDGMENT

FOR THE MALICIOUS USE OF PROCESS ,ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF PEENNSYLVANIA LAW .

Of the decision in Delaware County Court of Common Pleas March 26,1996 , 94-1283 ----Affirmed in Pennsylvania Superior Court February 12,1997 ----And

denied in Pennsylvania Supreme Court August 8, 1997 No. 183- 1987----Reconsideration denied in Pennsylvania Supreme Court February 5, 1998 No. Alloc. Dkt. 1987

PAGE ONE

Dolores B. Scheidly
606 Dutton the St.
Aston Pa. 19014
(610) 485-4274

FILED PRO SE BY THE PLAINTIFF
DOLORES B. SCHEIDLY

IN THE UNITED STATES DISTRICT COURT
E.D. PENNSYLVANIA

Dolores B. Scheidly	:	Plaintiff Pro se
	:	
vs	:	
	:	
Travelers Insurance Company	:	Defendant

FOR THE MALICIOUS USE OF PROCESS , ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND THE EQUAL PROTEDTION OF PENNSYLVANIA LAW

Plaintiff Dolores B. Scheidly pursuant to provisions of rules of 56 (a) of the Federal Rules of Civil Procedure moves

that the court enter a Summary Judgment interlocutory, in character , declaring that the Defendant as a matter of law is, liable to the plaintiff for the injuries complained of , leaving only the issue of the monetary amount of plaintiffs damages to be determined and in support therefore avers the following

This present Motion for Summary Judgment involves a decision in the Delaware County Court of Common pleas No. 4-12389 for the denial of a petition by Dolores Scheidly , to vacate an illegal arbitration award of September 19, 1994 and a counter petition By Travelers Insurance Company that was granted to confirm the March 17, 1994 award belonging to the indispensable party and contrary to the Pennsylvania Uniform Arbitration Act.

Respectfully submitted by

S/ deceased

Dolores B. Scheidly

Signed copy on file

APPENDIX H-----FIRST PAGE OF TRAVELERS RESPONSE BRIEF IN A "MOTION TO DISMISS COMPLAINT" IN RELITIGATION OF INSURANCE BENEFITS

SWARTZ CAMPBELL & DERWEILER
BY: ANDREW J REILY , ESQUIRE
JAMES D. CELLA , ESQUIRE
I D. Nos. 50076 / 64907
115 North Jackson Street
Media , Pa. 19063
(610) 566- 9222

ATTORNEYS FOR THE DEFENDANT

IN THE UNITED STATES DISTRICT COURT
E.D PENNSYLVANIA

DOLORES SCHEIDLY	:	
	:	No. 99-265
v.	:	
	:	
TRAVELERS INSURANCE COMPANY	:	

COVER PAGE FOR

MOTION TO DISMISS COMPLAINT

The defendant Travelers Insurance Company (Travelers) by its counsel Swartz Campbell & Detweiler hereby files this Motion to dismiss and avers.

The present action purports to seek damages for the malicious use of process, the abuse of process and the denial of the Constitutional right to equal protection of law arising out of the litigation of an uninsured motorists action which

arose out of a vehicle accident occurring in February of 1991 a true and correct copy of the complaint (also identified as a Motion for summary Judgment) is hereto attached and marked as Exhibit "A" [1]

---

1 The document filed by the plaintiff would appear to be improper under Fed R.C. P.3 . However, for purpose of this Motion, the defendant is treating the first filing as a complaint properly filed under the rules of Civil Procedure rather than a "Motion for summary Judgment"

END PAGE

Respectfully submitted
Swartz, Campbell & Detweiler

S/ illegable

Andrew J. Reilly, Esquire
James D. Cella , Esquire
Attorneys for DEfendant

Dated 2/11/ 99